

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

ROGELIO OCHOA,

Plaintiff,

vs.

CIVIL NO. 10-1188

ROY WOOD,

Defendant.

NOTICE OF REMOVAL OF ACTION

The United States of America, acting on behalf of Roy Wood, hereby gives notice to this Court pursuant to 28 U.S.C. §§ 1441, 1442(a), and 1442a of the removal of a civil action commenced in the Twelfth Judicial District Court, County of Otero, State of New Mexico, Cause No. CV 2010-799 IV, entitled as above. This removal is pursuant to 28 U.S.C. § 2679(d)(2) and (3), which directs that upon certification or refusal of the Attorney General (through his United States Attorney) to certify course and scope of employment, a petition pending in a State court may be removed to the District Court of the United States embracing the place in which it is pending.

1. A civil action has been brought in the Twelfth Judicial District Court, County of Otero, State of New Mexico, alleging negligence in the Defendant's operation of his motor vehicle, and that action is now pending.

2. Attached to this Notice of Removal as Exhibit 1 are copies of all pleadings that have been received by and are in the possession of the United States in this action.

3. Pursuant to 28 U.S.C. § 2679(d), the Attorney General, through his United States Attorney for the district involved, will either certify or refuse to certify that Roy Wood was

acting in the course and scope of his employment at the time of the incident from which the claim arose.

4. The initial state court action is properly subject to removal because under the 28 U.S.C. §§ 1441, 1442(a), and 1442a, any civil action brought in state court of which the district courts of the United States have original jurisdiction may be removed to federal court by the defendant. Plaintiff's action appears to be controlled by the Federal Tort Claims Act, 28 U.S.C. §§ 1346(b) and 2671 et seq., and thus is an action which the United States District Court has exclusive jurisdiction.

5. The named Defendant was acting in the course and scope of his employment as a Conservation Law Enforcement Officer for the United States Army at the time of the events alleged in Plaintiff's Civil Complaint and is covered by the provisions of the Federal Tort Claims Act. 28 U.S.C. § 2679.

6. Congress has further provided that, upon certification by the Attorney General or his designee that the Defendant was acting in the scope of his employment at the time of the incident out of which the suit arose, any such civil action or proceeding commenced in a state court shall be removed at any time before trial by the Attorney General to the district court of the United States of the district and division embracing the place wherein it is pending and the proceeding deemed a tort action brought against the United States under the provisions of Title 28 and all references thereto. 28 U.S.C. §§ 1346(b) and 2671 et seq.

7. Filed with this Notice of Removal as Exhibit 2 is a Certification by Kenneth J. Gonzales, United States Attorney for the District of New Mexico, that Defendant Roy Wood is deemed an employee of the United States and was acting within the scope of his Federal

employment at the time of the incidents giving rise to this suit. The authority to certify scope of office or employment has been delegated to the United States Attorney. See 28 C.F.R. § 15.3.

WHEREFORE, the United States gives notice that, pursuant to 28 U.S.C. § 2679(d)(2), Cause No. CV 2010-799 IV in the Twelfth Judicial District Court for the County of Otero, State of New Mexico, is removed to this Court.

Respectfully submitted,

KENNETH J. GONZALES
United States Attorney

Filed electronically 12/10/10

MICHAEL H. HOSES
Assistant U.S. Attorney
P.O. Box 607
Albuquerque, New Mexico 87103
(505) 224-1435
michael.hoses@usdoj.gov

I HEREBY CERTIFY that on December 10, 2010, I filed the foregoing pleading electronically through the CM/ECF system, and served the following by first class mail:

Robert J. Andreotti, Esq.
McBride Law Group
6565 Americas Parkway, N.E., Suite 200
Albuquerque, NM 87110
Attorney for Plaintiff

William R. Anderson, Esq.
Orraj, Anderson & Obrey-Espinoza
3800 E. Lohman Ave., Suite B.
Las Cruces, NM 88011-8273
Attorney for Defendant Roy Wood

/s/ Michael H. Hoses
MICHAEL H. HOSES
Assistant United States Attorney